

1958

## Recommendations for amendments to the Internal Revenue Code, submitted to the Committee on Ways and Means, House of Representatives, February 3, 1958

American Institute of Certified Public Accountants. Committee on Federal Taxation

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for  
Amendments  
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Internal Revenue Code**

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Committee on Ways and Means  
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**COMMITTEE ON FEDERAL TAXATION  
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**



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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
270 Madison Avenue, New York 16, N. Y.**

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## *Foreword*

This pamphlet of tax law recommendations is submitted on behalf of the committee on federal taxation of the American Institute of Certified Public Accountants as a supplement to testimony offered during hearings with respect to a general revenue revision before the Committee on Ways and Means of the House of Representatives.

Similar recommendations, dated October 1, 1956, were submitted for the record to the Subcommittee on Internal Revenue Taxation, Committee on Ways and Means. Many of those are repeated herein. As a result of our further study and experience with the Code, some of those have been modified or dropped and others have been added.

As in the past, the basic concern of these recommendations is with loopholes, inequities, and general improvements in the tax structure, along with technical amendments rather than such questions of policy as rates, incidence of tax, type of tax, etc. The recommendations in this pamphlet deal chiefly with some of the imperfections, uncertainties, hardships, and unintended consequences which we believe merit the consideration of Congress.

With a few exceptions, we have not attempted to deal with the question of effective date. In general, we believe that changes of substance should be made prospective only.

In addition to the Internal Revenue Code and administrative and judicial interpretations, we review such materials as tax legislation introduced by members of Congress, and the recently issued reports of the Advisory Groups to the Subcommittee on Internal Revenue Taxation. It should be noted that the report on Subchapter C (Corporate Distributions and Adjustments), dated December 24, 1957 and the revised report on Subchapter K (Partners and Partnerships), dated December 31, 1957, were released after these recommendations were adopted.

Some of the problems covered by these recommendations are broad; some are limited in scope. In oral testimony delivered today before the Ways and Means Committee, we have endeavored to direct particular attention to such broad questions as disparity in treatment between residents of community property states and other taxpayers (Recommendation No. 1); averaging of income (Recommendation

No. 7); reimbursement of expenses of individuals (Recommendation No. 9); taxpayers' fiscal years (Recommendations Nos. 148 and 179); reserves for estimated expenses and deferral of prepaid income (Recommendation No. 150); the income tax treatment of multiple trusts (Recommendation No. 163); taxation of closely-held corporations as partnerships (Recommendation No. 213).

There are many areas which can be studied only by a re-examination of the underlying philosophy of significant provisions in the Code. Examples of such areas are the treatment of capital gains and losses, gains and losses on the disposition of business property, contributions in kind, tax-exempt income, tax-exempt organizations, fringe benefits, personal deductions, and numerous other provisions. For many years, the Institute has urged the appointment of an independent commission to review the tax structure of our country. The appointment of Advisory Groups is a step in that direction. The ever-growing complexity and size of our revenue system makes imperative the appointment of a commission, representing all segments of the economy, to study the entire tax structure and to aid Congress in developing a truly new tax law. We hope such a study will be sponsored by this Congress.

Committee on Federal Taxation  
American Institute of Certified Public Accountants

# Recommendations for Amendments to the Internal Revenue Code

## Section

### 1

#### **General**

Attention should be given to eliminating disparities in treatment between residents of community property states and other states. In this connection, consideration should be given to such problems as hobby losses, attribution rules, exploration expenditures for other than gas or oil, exclusion for earned income outside the United States, capital losses.

### 2

#### **31(a)(2)**

Taxpayers on a fiscal year basis should be permitted to claim credit for the actual withholdings made by their employers during that taxpayer's fiscal year. As the law now stands, a taxpayer on a fiscal year ending June 30, 1958 does not get credit for the withholdings in the first half of the calendar year until his subsequent taxable year.

### 3

#### **34 243**

Short dividends should be offset against long dividends on the same security in figuring the dividend credit to eliminate the existing loophole and tax reduction from being long and short at the same time.

### 4

#### **34(b)(2)**

It should be made clear that for purposes of the limitation, taxable income includes capital gains even where the alternative tax is used.



**Section**

**5**

- 37(c)(1)** Persons under 65 years of age, who receive pensions from private or industrial retirement systems, should be permitted the retirement income credit just as persons retired under a public retirement system.

**6**

- 37(g)** In computing earned income of partners and individuals in business, reference is made to section 911(b), which in turn refers to 30% of the "profits." The meaning of the term profits should be clarified. It might mean all taxable income, or income from certain classified sources, or all earnings and profits.

**7**

- 61** Averaging of income for individuals should be permitted along the lines of plans previously submitted by the Institute (Hearings before the Committee on Ways and Means, House of Representatives, 83rd Congress, First Session, on Forty Topics Pertaining to the General Revision of the Internal Revenue Code, p. 595), or along the lines of H. R. 126 (85th Congress).

**8**

- 61** Expenses of moving for the convenience of the employer when paid or reimbursed by the employer should not be included in the employee's gross income for either new or old employees.

**9**

- 61** It should be made clear that gross income does not include receipts or accruals from others as reimbursement for expenses except to the extent that the reimbursement is compensation in whole or in part for services or use of capital.

**Section**

**10**

- 62(2)(D)** This provision, relating to trade or business expenses, should apply to all outside representatives of an employer rather than just salesmen.

**11**

- 151(e)(1)(A)** The elimination of the \$600 gross income test in the case of certain children as dependents should be expanded to cover all dependents, as long as the other tests of the law are met.  
In any event, a person, otherwise a dependent, who is 65 years of age or over and whose gross income is less than \$1,200, should qualify as a dependent.

**12**

- 152(a)(9)** It should be made clear in the statute that the spouse of a taxpayer can not be treated as a dependent of the taxpayer.

**13**

- 161** The Code should affirmatively provide for the amortization of bond issue costs, license costs, franchise costs, and other like intangibles.

**14**

- 162** Without prejudice to existing situations, expenses incurred to defeat or promote legislation should be deductible if the purposes therefor and the methods used do not violate federal or state laws and the expenses are otherwise deductible under section 162.

**15**

- 164(d)** Apportionment should apply to any property taxes which are prorated in the terms of sale.

Section

**16**

- 164(d)** The apportionment of taxes should apply not only to sales but also to other dispositions, such as exchanges.

**17**

- 164(d)** This provision should be extended to apply to successive sales of the same property during the real property tax year.

**18**

- 164(d)** This provision should be extended to cover taxes paid or accrued prior to a sale in respect to a real property tax year subsequent to the sale.

**19**

- 165(c)(3)** A taxpayer should not be forced to make an election on the treatment of casualty losses at the time of filing the estate tax return. There should be a free election to deduct such losses for either estate or income tax purposes (but not both), and the taxpayer should have the right to make a change in election at any time during the statutory period.

**20**

- 165(e)** The loss should be allowed in either the year of theft or the year of discovery at the election of the taxpayer. Otherwise, the taxpayer may, as a result of the theft, have no taxable income in the year of discovery, and might even be insolvent at the time.

**21**

- 165(g)(1)** It should be made clear that the deduction for worthlessness is independent of the possible workings of section 267 where the securities involved are those of a related taxpayer. (This correspondingly applies to section 166 (d) (1) (B).)

**Section****22**

- 165(g)(3)** The percentage of ownership test should be reduced to 80% to conform with the consolidated return affiliated group requirements.

**23**

- 166(d)** The Code should define business bad debts to include all losses from debts originating in a transaction entered into for profit.

**24**

- 166(d)(2)** The transferee of a business-acquired debt should be able to treat the debt as a business debt, regardless of the business circumstances of his own acquisition.

**25**

- 166(f)** The difference between a bad debt to the lender and to a guarantor should be eliminated.

**26**

- 167** Goodwill, trademarks, trade names, secret processes and formulas and other like intangibles should be amortizable over a stated period to be fixed by statute or over a demonstrable useful life, whichever is less, to the extent such items are not otherwise treated under other sections of the Code.

**27**

- 167** Leasehold improvements should be depreciable regardless of whether the estimated useful life is longer or shorter than the term of the lease.

**28**

- 167** It should be made clear that the correction of a factor in the depreciation computation is not a change in method requiring permission.



**Section**

**29**

- 167(c)** Where there is a continuation of the transferor's basis, the successor should be permitted to use the transferor's depreciation methods.

**30**

- 167(c)(2)** The original user requirement should be eliminated (except where property is acquired after December 31, 1953 from a related taxpayer which acquired the property prior to that date).

**31**

- 167(g)** The last sentence should give priority to the provisions of the will, just as the preceding sentence does for the provisions of a trust. Otherwise, one person may be left depreciable property but all the estate's beneficiaries will be participating in the deduction.

**32**

- 170** A gift to charity of property subject to a liability in excess of its basis should give rise to taxable gain to the extent of such excess.

**33**

- 170** Where a taxpayer purchases a premium bond with an early call date, he would be entitled to a rapid deduction of the premium. If the taxpayer then contributes the bond to a charitable organization, there would be a deduction of the full fair market value of the bond. No double deduction of the premium should be allowed.

**34**

- 170** A taxpayer who sells stock short just before the ex-dividend date and contributes his short position immediately after the ex-dividend date should not receive a deduction for both making good on the dividend and the value of the contributed short position.

**Section****35**

- 170(b)(1)** Individuals should be allowed a carryover of excess charitable contributions.  
In the alternative, the contribution deduction should not be limited by a net operating loss carryover.

**36**

- 170(c)(5)** Payments to an exempt cemetery company by a lot owner for perpetual care should not qualify as a deductible contribution.

**37**

- 171(b)** The 3-year call provision merely sets up another arbitrary criterion and does not deal effectively with the loophole. The premium should, in the first instance, be amortizable from date of acquisition of the bond to date of maturity. In the event of an actual call before maturity, the unamortized premium should be allowed as a deduction in that year.

**38**

- 172(b)(2)** Where a company liquidates, the right of carryback should be to the 2-year period prior to the commencement of liquidation regardless of how long the period of liquidation takes. Otherwise, from a practical standpoint, after the second year of liquidation, the net losses have no offset.

**39**

- 172(d)(6)**  
**246(b)(2)**  
**545(b)(4)** In computing undistributed personal holding company income, the deduction under section 246(b) for dividends received should not apply in making the net operating loss adjustment under section 545(b)(4).

**Section**

**40**

- 172(e)** Discrimination exists between a fiscal year taxpayer and a calendar year taxpayer in the mechanics involved in the carryback computations where a dividends-received credit was utilized by the taxpayer in the preceding years to which a net operating loss is carried back. For example, a taxpayer, having a fiscal year ending June 30, 1954, would be permitted to carryback to the second preceding taxable year only one-half of the net operating loss during fiscal 1954. However, in carrying back this one-half of the net operating loss to the fiscal year ending June 30, 1952, the amount of the carryback would be reduced by the entire dividends-received credit claimed in 1952.
- In order to correct this inequity, a pro rata reduction should be made in all adjustments which are offset against the fiscal year carryback.

**41**

- 172(f)** The pro rata application of the 1939 Code and the 1954 Code applies to a taxable year beginning in 1953 and ending in 1954 *only if* a net operating loss is sustained in such year. But the Code does not prescribe treatment for such fiscal year if it shows a net income which is affected by a loss carryover or carryback. In such a case the amount of the net operating loss to be used should be based on a similar pro rata computation.

**42**

- 174(b)(1)** The parenthetical material relating to benefits from research should be eliminated. There may never be benefits realized from the research, and establishing time or extent of abandonment may be impossible.

**43**

- 175(c)(1)** The cost of planting trees to combat the effects of erosion should qualify as an expenditure for soil and water conservation.

**Section**

**44**

- 212** Expenditures in connection with preliminary investigations of businesses or investment opportunities, in order to determine whether an investment should or should not be made, should be deductible under section 212.

**45**

- 212** Employees should be allowed to deduct (either as incurred or over a period of amortization) expenses which are directly related to the securing of specific employment.

**46**

- 213(b)** The separate limitation on medicine and drug costs should be eliminated. It sets up a difficult allocation and computation problem that is hardly worthwhile for the amounts involved.

**47**

- 213(d)(2)** The limitation on the deduction of expenses of the last illness should be removed. The expenses of the last illness should be deductible for both income and estate tax purposes just as if the amount had been paid by the decedent.

**48**

- 214(b)(2)(A)** A joint return should not be necessary and the restriction should not apply if the husband and wife are in fact separated by agreement, or if the husband is a non-resident alien.

**49**

- 243** The deduction for intercorporate dividends should be 100%.



**Section**

**50**

- 243** Since in the case of dealers in securities stocks are part of their inventory, no dividend deduction or credit should be allowed except for dividends on stock held for investment account.

**51**

- 246(b)** The limitation on the deduction for dividends received equal to 85% of taxable income should be eliminated. In any event, the interaction of this section and section 172 creates an awkward “notch” situation in which \$1 of deductions can make a tremendous difference in the amount of tax. This should be removed.

**52**

- 248(a)** The deduction for organizational expenditures should be required rather than elective.

**53**

- 248(b)** The deduction for organizational expenses should be expanded to include reorganization (including stock dividends, stocks splits, etc.), registration and stock listing costs.

**54**

- 267(a)(2)(A)** If the amount accrued is not paid within 2½ months after the close of the year of accrual, the deduction should nevertheless be allowed if the related party reports the item as income either in the year of accrual or the succeeding year.

**55**

- 267(b)(9)** The Code should define what is meant by control of a charitable organization. The approach in section 503 (c) might provide a guide.

**Section****56**

- 269** Deficits of acquired corporations should be eliminated  
**382** (just as carryovers are) since deficits could be used to make tax-free distributions out of subsequent profits.

**57**

- 301** Gain recognized under section 453 (d) upon the distribution of installment obligations to a corporate distributee should be taken into account as an increase in basis in sections 301 (b) (1) (B) (ii) and 301 (d)(2) (B).

**58**

- 301(b)(1)(B)** When a foreign corporation makes a distribution in kind to a domestic corporation, the amount of the distribution should be the fair market value of the property, rather than the lower of the basis to the distributor or fair market value.

**59**

- 302** The problem of vanishing basis should be dealt with in  
**306** the statute along the following lines:
- (1) Where the proceeds of stock which is sold or redeemed are taxed as ordinary income, the allocation of basis to other stock held by the taxpayer, if any, should be clearly provided.
  - (2) Where the transaction results in ordinary income because of the attribution rules of section 318, there should be allocation of the basis among the persons whose stock is attributed to the taxpayer.
  - (3) Any basis not so allocated should be allowed as a capital or ordinary loss as circumstances warrant.
  - (4) Any allocation of basis which affects taxable income should be recognized without regard to limitations of time for adjusting tax.

**Section**

**60**

- 302(b)(2)** If a transaction comes under both section 302(b)(2) and section 302(b)(3), section 302(b)(2) should prevail.

**61**

- 302(b)(2)** The rule on disproportionate redemptions should be buttressed by measuring the effect of planned reacquisitions within the next five years.

**62**

- 302(b)(2)(D)** If a series of redemptions can be deemed to result in a distribution which is not substantially disproportionate, it conversely should be true that a series of redemptions that results in a substantially disproportionate redemption should give the status of disproportion to each redemption in the series even though a particular redemption may be proportionate. Thus, a planned disproportionate redemption should be possible through a series of redemptions.

**63**

- 302(b)(2)(D)** A fixed number of years to the series should be involved so that there will be some point of time when both the taxpayer and the government will know that the matter is at an end.

**64**

- 302(b)(2)(D)** For the government's protection, an extension of the statute of limitations is necessary for purposes of this section only.

**65**

- 302(b)(3)** An estate of a person dying subsequent to August 16, 1954 should come within the provisions of the complete termination of interest rules in respect to redemptions

**Section**

that are made pursuant to valid contracts entered into prior to the enactment of the 1954 Code, and the attribution rules of section 318(a) should not apply thereto.

**66**

- 302(c)(2)** The acquisition of an interest within 10 years from the date of distribution should not apply to an interest in a successor corporation unless at the time of the intervening reorganization the stockholders of the original corporation acquired 50% or more of the stock of the successor corporation.

**67**

- 302(c)(2)(A)** If, during the 10-year period provided by this section, the taxpayer should acquire an interest in the corporation, the statute is left open for assessment since the full amount of the earlier distribution will then become taxable as a dividend. A similar opening of the statute should be provided to allow a claim for refund, based upon the basis of the stock redeemed in the distribution which is subsequently treated as a dividend.

**68**

- 302(c)(2)(A)** An interest in a pension fund should be specifically excluded, just as is done in the last sentence of section 318(a)(2)(B).

**69**

- 304** This provision should cover the acquisition by a parent of minority stock of a subsidiary held individually by the controlling stockholders of the parent.

**70**

- 306(a)** A disposition should not be deemed to take place when securities are pledged unless pledged without recourse.



**Section**

The disposition takes place only at the time the securities are in fact used to pay the debt or to cancel the debt. However, page 242 of the Senate Finance Committee Report on H.R. 8300 states that a disposition will be deemed to exist when securities are pledged.

**71**

**306(a)(1)** The amount treated as ordinary income on a disposition of section 306 stock which is not a redemption should also be made subject to the dividends-received credit or deduction.

**72**

**306(a)(1)(A)(ii)** The difference between a sale and a redemption in measuring the amount of income reportable upon the disposition of section 306 stock should be eliminated by making reference in each case to the earnings and profits at the time of such disposition.

**73**

**306(b)(1)** The requirement that everything be sold all at one time is not practical. Provisions should be made for a series of sales within a limited period of time pursuant to a plan of which the Commissioner is notified in the first return affected.

**74**

**306(b)(1)(iii)** If the disposition terminates the shareholder's entire interest, there should be no difference in treatment because the stock is sold to a third party instead of to the corporation. The attribution rules of section 318(a) should not apply if the requirements of section 302(c) are met.

**Section****75****307**

Where the rights are acquired upon stock that is purchased and immediately sold ex-rights, and where no allocation of basis is required, the taxpayer secures an immediate short-term loss deduction on the stock and has available a no-basis position for the rights which makes possible subsequent long-term gain. In order to prevent abuse of this possibility, the no-allocation-of-basis rule should be conditioned upon a 30-day holding period of the stock.

**76****312(j)**

It is possible to circumvent the restrictions of section 312(j) where borrowing is made by a subsidiary which is then liquidated to the parent followed by a distribution of the excess money by the parent. There would be no section 312(j) loan outstanding to the parent. In such circumstances, the parent should inherit the status of the original borrower.

**77****312(j)(1)**

In determining the excess of a loan over the basis of the property constituting security, earlier distributions which were treated as taxable dividends by the operation of this provision should be applied to reduce the excess. In addition, the increase in earnings and profits from a gain on the disposition of the property securing the loan should be reduced by the amount of the earlier distributions which were treated as taxable dividends. Otherwise, in a series of distributions, amounts in the aggregate greater than the excess of the loan over basis will be treated as taxable distributions.

**78****312(j)(1)(A)**

This section should indicate its application in situations where less than 100% of the loan is guaranteed.

**Section**

**79**

- 316(a)(2)** The definition of a dividend should not include a distribution of current earnings and profits if the distributing corporation has an accumulated deficit in earnings and profits at the close of the year without regard to any distributions made during the year.

**80**

- 318(a)(1)** It is unrealistic to attribute ownership to husband and wife separated by agreement. The theory of the alimony provision should be recognized here.

**81**

- 318(a)(2)** The difference between the constructive ownership rule for an estate and for a trust should be eliminated. At present actuarial valuations apply in the case of a trust but not an estate.

**82**

- 318(a)(2)** The limitation of the attribution rule through corporations to cases where there is a 50% ownership of stock should be eliminated.
- As long as the 50% test remains, attribution of ownership from a beneficiary to a trust or estate, or from a partner to a partnership, should be limited to those cases where the beneficiary or partner has an interest of 50% or more in the trust, estate, or partnership.

**83**

- 318(a)(2)(B)** Stock owned by the beneficiary of a trust should not be attributed to the trust, since the trust may inadvertently be disqualified from otherwise legitimate transactions. The trust may have no knowledge of the stock holdings of its beneficiaries and no control over them.

**Section**

**84**

**318(a)(3)** Convertible securities should be included along with options.

**85**

**318(a)(4)** As in the case of the family attribution rules, there should be no doubling up for attribution through estates, trusts, partnerships, and corporations.

**86**

**332(c)(2)** This provision should be expanded to include indebtedness created after the adoption of the plan.

**87**

**333(d)** The period within which the election must be filed should be 90 days after the adoption of the plan of liquidation.

**88**

**333(e)** Only securities purchased after December 31, 1953 and  
**333(f)** within 24 months prior to adoption of the plan of liquidation should be included in determining the gain to be recognized.

**89**

**334(b)(2)** If the liquidation of a corporation meets the requirements of section 334(b)(2), the distributing corporation should be treated as follows:

- (1) The distribution of installment obligations should be treated as a disposition by the distributing corporation under section 453(d).
- (2) Income or loss should be recognized to the distributing corporation if it is on the cash basis or completed contract method of accounting, measured by the difference between such method and the accrual method of accounting.

**Section**

**90**

- 334(b)(2)** There should be an affirmative provision that the merger of a subsidiary into the parent is to be regarded the same as the liquidation of the subsidiary.

**91**

- 334(b)(2)** A material difference may result where there is a liquidation of a subsidiary which in turn has its own subsidiary. If the sub-subsidiary is first liquidated into the subsidiary which is in turn liquidated into the parent, a different result is reached from where the subsidiary is first liquidated into the parent (transferring the stock of the sub-subsidiary to the parent) and then the sub-subsidiary is liquidated into the parent. This difference should be eliminated.

**92**

- 334(b)(3)** The purchase of stock pursuant to an option should be treated as a purchase under section 334(b)(2)(B) where the stock is purchased from someone whose stock would not otherwise be attributed. Such stock should be considered as purchased on the date the option was acquired if the option is exercised during the 12-month period beginning with the earliest acquisition of stock used in meeting the requirements of section 334(b)(2).

**93**

- 334(b)(3)(A)** A tax-free exchange of stock for stock in a recapitalization qualifies as a "purchase." In such a case the time of acquiring the new stock should be defined as the acquisition date of the original stock.

**94**

- 334(c)** While the language is consistent with section 113(a)(18) of the 1939 Code, the statute should give effect to what

**Section**

has been accepted administratively about the need for increasing basis in respect to corporate liabilities taken over by the stockholder.

**95****336**

Income or loss should be recognized to the liquidating corporation if it is on the cash basis or completed contract method of accounting, measured by the difference between such method and the accrual method of accounting. Exception should be made only in the case of an intercorporate liquidation under section 332(a) where the parent takes over the property at the same basis as in the hands of the liquidated subsidiary.

**96****337(a)**

An involuntary conversion should be treated as a sale or exchange.

**97****337(b)(2)**

The provision with respect to inventory is too restrictive. Sales of inventory should not be taxed if the sales are in the normal course of liquidation. Replacements, or other new acquisitions, should not be permitted during liquidation.

**98****337(c)(1)(A)**

It should be made clear that the determination of collapsible status is made before sales in process of liquidation under section 337 take place.

**99****337(c)(1)(A)**

Section 337 should apply to any sale or exchange made by a collapsible corporation (as defined in section 341(b)), if the limitations of section 341(d) are applicable.



**Section**

**100**

- 341** If a redemption meets the test of both section 302 and section 341, then section 341 should apply.

**101**

- 341** If a redemption meets the tests of both section 341 and section 346, then section 341 should apply.

**102**

- 341(a)** Gain on the sale or exchange of collapsible corporation stock should be treated as gain from the sale or exchange of property which is not a capital asset.

**103**

- 341(a)** Convertible bonds and options to acquire stock should  
**341(d)** be treated as stock.

**104**

- 341(b)** The definition of section 341 assets should not be limited to "purchase" of unrealized receivables (section 341(b)(1)) since those assets are not ordinarily purchased.

**105**

- 341(b)(3)** The definition of section 341 assets should explicitly include copyrights, literary, musical or artistic compositions and similar property.

**106**

- 341(d)(2)** The phrase "gain is attributable to the property" should be clarified. As the statute now reads, the corporation may be held a collapsible corporation even though the corporation has realized upon a substantial portion of the section 341 assets or expected income. In measuring the 70% such realization should be deemed not to be attributable to collapsible assets.

**Section****107**

- 341(d)(3)** The impact of section 341 can be avoided by a cash basis taxpayer by providing that the sale price for the stock shall not be paid until three years after the manufacture of the collapsible assets. In such cases, there is a question as to whether the gain would be “realized” within the 3-year period. Time of realization of sales price should not be the criterion, but rather the time of sale.

**108**

- 346(b)** A reasonable interval of time should be permitted to elapse between the sale of the assets of a trade or business and the distribution of the proceeds of the sale in partial liquidation to the shareholders. As presently worded, the business sold must be conducted actively throughout the 5-year period *immediately* before the distribution.

**109**

- 346(b)(1)** This provision should also extend to the distribution of the proceeds of sale of stock in a subsidiary where the subsidiary met the 5-year rule.

**110**

- 355** A split-up status should be recognized where one trade or business is split down the middle.

**111**

- 355(a)(3)** Tax-free distribution of the stock of a newly created subsidiary should be allowed even though the transfer of property to the subsidiary results in realized gain because of the assumption of liabilities in excess of basis, provided the 5-year active business test is otherwise met.

**Section**

**112**

- 355(a)(3)** When stock has been acquired in a transaction where gain or loss is recognized, treatment of the distribution as other property should not be extended to a subsequent investment.

**113**

- 355(b)** The requirements of section 355(b) should not apply to a court-ordered distribution of stock and securities to shareholders in compliance with anti-trust orders, etc.

**114**

- 355(b)(1)(B)** It is not practical to require that there be no assets prior to the distribution other than stock or securities in the controlled corporation. Assets retained to pay claims should be provided for, just as is done in the liquidation provisions.

**115**

- 355(b)(2)(C)** The definition of a separate trade or business should specifically exclude a trade or business acquired under section 337.

**116**

- 356** Fair market value of property received should be reduced by liabilities assumed. Section 356(a) and section 356 (b) should be made consistent with section 301.

**117**

- 356(e)** The rule of fair market value should be restricted to noncorporate distributees. Otherwise a corporate distributee would benefit by a stepped-up basis if low-cost high-value property is distributed by another corporation in redemption of section 306 stock.

**Section****118**

- 357(c)** Where gain is realized by an exchange involving the assumption of a liability in excess of the basis of the property transferred, the character of the gain should be determined on the basis of the facts. Section 1.357-2(b) of the regulations requires arbitrary allocation of the gain in proportion to relative fair market value of the properties, without regard to the basis of each separate property (apparently based upon comments on page 270 of Senate Finance Committee Report). (This same point could also arise in section 311(c).)

**119**

- 362(c)** Provision should be made to authorize extending the 12-month limitation.

**120**

- 362(c)(2)** The reduction in basis should apply where property is acquired by a subsidiary instead of by the parent.

**121**

- 368(a)(1)(B)** These rules should be modified to make it possible in a reorganization for a corporation also to acquire stock or properties in exchange in part for its own stock and in part for its parent's stock.
- 368(a)(1)(C)**

**122**

- 368(a)(1)(B)** The issuance by the transferee of cash to avoid fractional shares, or the assumption by the transferee of reorganization expenses or transfer taxes should be affirmatively recognized as not impairing qualification as a type (B) reorganization.

**123**

- 368(a)(2)(B)(iii)** For the purpose of the 80% rule the acquiring corporation should be required to acquire at least 80% of the

**Section**

value of the assets less liabilities of the other corporation solely for its voting stock. The assumption of liabilities should not be treated as the exchange of money or other property in addition to voting stock.

**124**

- 368(a)(2)(C)** In the case of the acquisition of stock of another corporation, qualifying under section 368(a)(1)(B), the transfer of all or part of such stock to a controlled subsidiary should be permitted.

**125**

- 381** Inheritance should apply to divisive reorganizations where 80% interest continues the same, or else, by using two transferees, the taxpayer can automatically break previous adverse elections.

**126**

- 381** Inheritance should include deductions for research, tax accruals, excess soil and water conservation and accelerated amortization; elections on war loss recoveries and foreign tax credit; disallowed loss on family transactions, borrower's status for section 312(j) windfall distributions and other items in which inheritance would be considered appropriate.

**127**

- 381** On the inheritance of carryovers, the carryovers should likewise apply to items that the predecessor would have had to report as income, and to the same classification of items as in the hands of the predecessor, and should not be restricted merely to deductions. For example, if a successor receives a property which in the hands of the predecessor was amortized under section 168, any gain on disposition by the successor should be subject to the provisions of section 1238.

**Section**

**128**

- 381** It should be made clear that inheritance applies to a series of successions.

**129**

- 381(a)(2)** A reorganization under section 371 should be specifically included. If a section 371 reorganization also happens to come under section 368, it is not clear whether carryovers will be denied because the specific section involved is section 371.

**130**

- 381(c)(1)(C)** It should be made clear that the same rule applies where in the current year the distributing company has a loss and the acquiring company a profit.

**131**

- 382** Both sections 269 and 382 should be handled as if the Kimbell-Diamond theory of purchase of assets applied, where the intent described in section 269 is present.

**132**

- 382** On net loss companies and carryovers, there should be the elimination not only of the carryforwards but also of the current year's loss arising prior to acquisition.

**133**

- 382** Since the acquisition of stock in a reorganization is not a "purchase," and also since the 20% provision applies only to asset acquisitions and not stock acquisitions, it is possible for a corporation to acquire the stock of a loss company in a reorganization and either build it up or later liquidate it. This result should not be permitted.

**Section**

**134**

- 382(a)** There is duplication in computing whether there has been a 50% change, where the stockholders own stock in another corporation and that corporation acquires stock in the loss company during two successive years. Both the corporation and the stockholders are considered separate persons, even though the corporation's holdings are imputed to the stockholders. This should be eliminated.

**135**

- 382(a)(1)** The loss of the carryover should be restricted to losses which occurred before the change in stock ownership and the change in business. Because of the present wording in section 382(a)(1)(A)(ii), if there was a change in ownership and a change in business at the beginning of a taxable year and the changed business showed a net operating loss in that year, that net operating loss could be denied as a carryover to succeeding years. This result is not intended and is inequitable.

**136**

- 382(a)(1)(C)** It should be made clear that a mere change in location is not a change of business. The Senate Finance Committee Report on H.R. 8300 (page 285) makes the statement that such a change of location is a change of business. This is not realistic.

**137**

- 382(b)** It should be made clear that acquisitions are still governed by the general provisions of section 269. At present if in a reorganization the continued interest is deliberately made slightly less than 20%, section 269 may not apply.

**Section****138**

- 382(b)** The section should be clarified to cover specifically a bankruptcy reorganization where common stockholders are eliminated. Section 382(b) prohibits carryovers in a section 371 reorganization, but it is doubtful if it was intended to prevent carryover of net operating losses because the taxpayer is bankrupt and permit a carryover where the successor is solvent and equity owners are 100% in control.

**139**

- 401** Provision should be made for retirement income of self-employed people along the lines of H.R. 9 and 10 (85th Congress).

**140**

- 401** There should be a positive statement of the general rule governing the treatment of deferred compensation.

**141**

- 401** Group life, hospitalization, medical, wage continuation, supplemental employment benefits, thrift plans, etc., should be required to meet statutory criteria in order to qualify for deductibility of contributions and extension of tax advantages to distributees.

**142**

- 402(a)** A plan member should not be deprived of the benefits  
**403(a)** of these sections because of the action or omission of an action by the employer which resulted in loss of qualified status under section 401.

**143**

- 404(a)(1)(C)** The residual deduction in respect of the 10-year stretch-out of past service costs should not be forfeited on



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death or liquidation of the employer to the extent of prior funding.

**144**

- 404(a)(5)** Where a contribution to a non-qualified plan was not deductible because the interests of the members were forfeitable, deduction of that contribution should be allowed to the employer in the year when benefits are distributed or made available.

**145**

- 421** In order to protect optionees under plans involving closely held companies, an election to adjust the option price upward retroactively to conform to a determination of value should be permitted.

**146**

- 421(d)(2)** The provision regarding subsidiaries should be extended to embrace subsidiaries created after the employment. Otherwise, if an employee is shifted to the new subsidiary, he loses the benefit of the option.
- 421(d)(3)**

**147**

- 421(g)(1)** A de minimis rule should be provided so as to avoid possible hardships on persons acting in good faith.

**148**

- 442** The existence of a demonstrable natural business year should be accepted as a valid basis for a change of taxable year.

**149**

- 443(b)(2)(C)** The elective feature of the tax computation on the change of annual accounting period should be eliminated. The rule should be absolute that the tax for the short period will always be the lowest of the various ways of computing it.

**Section****150**

- 446** In accordance with the direction in the Senate Finance Committee Report on P.L. 74 (84th Congress) (repeal of sections 452 and 462), specified expense reserves should be allowed as deductions and specified items of prepaid income should be permitted to be deferred, with due regard to the transitional problems.

**151**

- 446** The statute should provide that a taxpayer may request permission to change the method of accounting for a material item at any time within 21½ months after the end of the taxable year in which it is desired to make the change.

**152**

- 453(c)(2)** The tax credit on a change to the installment basis should be computed on the basis of eliminating gross income attributable to collections of prior years' fully reported sales and computing the tax on the balance of taxable net income.

**153**

- 453(d)** This provision, dealing with dispositions of installment obligations, should not be deemed to apply to transfers such as incorporations and reorganizations in which no gain or loss is recognized and which are not covered by section 381(c)(8).

**154**

- 461(c)** The word "real" should be deleted so that application of this provision as to accrual of taxes will be to all property taxes.

**Section**

**155**

- 481(a)(2)** Adjustments for the period prior to January 1, 1954 should not be eliminated. However, in fairness to those taxpayers who took action consistent with the language of the present statute and the Senate Finance Committee Report, any such change should not have retroactive effect or, in the alternative, they should be given a limited period in which to return to their former positions.

**156**

- 481(b)** Adjustments may be necessary which will have the effect of a substantial reduction in income. In this case, the reduction in tax for the current year should not be less than if the deduction were spread back just as now done with net increases under either section 481(b)(1) or section 481(b)(2).

**157**

- 482** Whenever this provision permitting the Secretary to allocate income or deductions is applied, there should be the automatic right in the other party to the transaction to pick up the effect of the adjustment and the statute of limitations should be deemed reopened for the purpose.

**158**

- 503(c)(1)** Since the purchase of preferred or common stock of the employer by a trust is permitted, the purchase of unsecured debt obligations of the employer should also be permitted.

**159**

- 535(b)(1)** The same election in reference to the handling of taxes paid, as distinguished from taxes accrued, that is in section 545(b)(1) should be made applicable to section 535(b)(1).

**Section**

**160**

- 565(c)** Amounts which have previously been taxed as consent dividends should be treated as debts of the corporation.

**161**

- 582(c)** The requirement concerning interest coupons or registered form should be eliminated, just as was done in sections 171 and 1232.

**162**

- 615(a)** The maximum lifetime deduction should be \$400,000.  
**615(c)** The present rule places a premium on maximum expenditure.

**163**

- 641** Provision should be made for requiring the filing of a combined return by a group of trusts created substantially by one grantor for one beneficiary.

**164**

- 642(c)** The charitable deduction of trusts or estates should be treated the same as a distribution for the purpose of determining the character of income from which the contribution stems. Section 663(a)(2) provides by reference that the charitable deduction is not a distribution. Section 661 sets up rules for determining character of income for "distributions" only.

**165**

- 642(g)** The principle of disallowance of double deductions should be extended to cover offsets to sales proceeds (as distinguished from deductions) such as commissions on sale of securities or real property.

**Section**

**166**

**642(h)** The "separate shares" rule, as provided in section 663(c), should apply, in the case of a partial termination of an estate or trust, to terminated beneficiaries who have a *percentage* interest in the corpus.

**167**

**642(h)** Where a dower right is an interest in a fractional share of an estate, it should be deemed to qualify under section 642(h).

**168**

**643(a)** Only the excess of corpus deductions over corpus income should be deductible in computing distributable net income.

**169**

**652**  
**662** In the event of the death of a trust beneficiary prior to the close of the tax year of the trust, his personal representative should be permitted an election to report the share of income in the final return or the return of the estate as income in respect of a decedent.

**170**

**663(a)(1)** Distributions paid out of corpus should not be treated as income.

**171**

**663(c)** The separate shares rule should apply to estates as well as to trusts.

**172**

**665** The \$2,000 exemption should be eliminated.

**173**

**665** Income of an estate earned or received after the close of the third taxable year of the estate should be subject

**Section**

to the throwback rule. This would discourage prolonging the termination of the estate for the purpose of benefiting from lower income tax rates than the beneficiaries.

**174****665**

The throwback rule should not apply to income accumulations that are distributed to a third person by reason of the death of a minor for whom the income was accumulated. Under those circumstances, if the throwback rule would not have applied to the deceased first beneficiary, it should not, to that extent, apply to the successor.

**175****665(a)****666**

Where the trustee must distribute all income currently, may distribute corpus and has the power to allocate capital gains to corpus or income, for purposes of the throwback rule, undistributed capital gains should be included in distributable net income in the year of retention.

**176****666(c)**

It should be made clear that every distribution should be deemed to carry with it a pro rata part of the actual tax paid by the trust so that when the trust has ultimately distributed all of its income for some particular year in which there was an accumulation, all of the tax actually paid by the trust on distributable net income will be deemed distributed to and paid by the beneficiaries.

**177****673(b)**

Section 673 should also apply where there is more than one designated beneficiary.

**Section**

**178**

**677**

The grantor should be taxed only on income in fact used to pay insurance premiums and not on income that may be used. Otherwise, a grantor may be taxable on almost every trust. The court-approved rule limiting the amount to policies on the grantor's life which are in existence during the taxable year and on which the trustees are authorized to pay premiums should be incorporated in the statute.

**179**

**706(b)(1)**

A free choice of fiscal years should be permitted for new partnerships none of whose members is a partnership, a trust, or a corporation.

**180**

**706(c)**

For the purpose of qualifying for self-employment benefits, a deceased partner's distributive share of income should be recognized in his final return whether or not so included for federal income tax purposes.

**181**

**706(c)**

In the event of the death of a partner, his personal representative should be permitted an election to report his distributive share of income in the final return or the return of the estate as income in respect of a decedent.

**182**

**706(c)**

Where a partnership year closes with respect to a deceased partner because of an agreement to sell or exchange his interest upon death (buy-sell), it should be specifically provided that the sale, etc., is made by the estate or successor in interest so that no gain or loss would result to the deceased partner.

**Section****183**

- 732(b)** Section 751 (a) should be expanded to include section 306 stock. Otherwise a loophole exists since if section 306 stock is placed in a partnership and the partnership interest is sold, a capital gain results. If the individual acquiring the partnership interest then liquidates the partnership, the section 306 stock will take on the new basis and will lose its character as section 306 stock.
- 751(a)**

**184**

- 734(b)** The right to the adjustment should be available where a partnership buys out the interest of an estate or where the partners buy out the estate with partnership money distributed to them. As it now stands, there would be little if any gain recognized to the estate because of the valuation of the partnership interest as of the date of death of the deceased partner.

**185**

- 901** The foreign tax credit should be carried back and forward.

**186**

- 901** The statute of limitations should be extended to cover a change from a foreign tax credit to a deduction in order to allow for changes in the income of a particular year by reason of carrybacks from later years.

**187**

- 902(b)** Section 902(b) should also apply to all subsidiaries and all sub-subsidiaries if there is an unbroken chain of 95% or greater ownership.

**188**

- 1014** The estate tax value of stock options, on death of the employee, should be added to the cost basis of stock



**Section**

acquired upon exercise of the option. This will remove the discrimination between optionees who exercise options before death and those who did not exercise before death.

**189**

**1014(b)(9)** It should be made clear that donees of donees are included.

**190**

**1014(b)(9)** Basis should not be reduced by prior depreciation when the deceased would have been allowed that same depreciation and the estate tax basis would be allowed the beneficiary undiminished by that prior depreciation.

**191**

**1033(a)** An involuntary conversion should not receive less favorable treatment than a voluntary exchange. Gain should not be recognized where the new property is "property of a like kind" under section 1031.

**192**

**1091(a)** The wash-sale provision should apply to security traders (but not to dealers) whether or not incorporated.

**193**

**1201** The alternative tax should not be in excess of 25% of the amount of the net taxable income.

**194**

**1201** Where a capital gain is taxed at the alternative rate, the amount of such gain should not form a part of the income base upon which the various limitations of other items are calculated, except for the dividend credit or deduction.

**Section**

**195**

- 1212** A 2-year carryback for capital losses should be allowed just as in the case of net operating losses.

**196**

- 1212** Long-term losses should not be given the advantage of being made short-term when carried over.

**197**

- 1221** The exclusion of accounts or notes receivable should be broadened to cover receivables from rentals and royalties, collection of which would give rise to ordinary income.

**198**

- 1222** A short-term gain can now be made long-term by buying stock in regulated investment companies just before the ex-dividend date and selling just afterwards. The loss would be an offset to a short-term gain and what would be left is only the long-term-gain dividend. As a remedy, where the investment is held less than 30 days, the long-term-gain dividend and the short-term loss should be offset against each other.

**199**

- 1232** It should be made clear that an installment obligation arising from the sale of property on the installment basis is not (as to the seller) an evidence of indebtedness subject to the original issue discount provisions.

**200**

- 1232(c)** Gain on the sale of bonds should be ordinary income to the extent of any discount attributable to *any* interest coupons missing at the time of purchase.

**Section**

**201**

- 1233** A short sale where there is a corresponding long position should always be regarded as a liquidation of the long position.

**202**

- 1233** A capital loss can be converted to an ordinary deduction by selling stocks short just before the ex-dividend date, and covering the short sale just after the ex-dividend date for a short-term capital gain which can offset an existing long-term capital loss. Making good on the dividend on the short stock then gives an ordinary deduction. As a remedy, where the short position is maintained for less than 30 days, the short dividend should be applied against the capital gain on the transaction.

**203**

- 1237** It should be made clear that no inference of noncapital-asset status should attach to holdings of real property for less than five years.

In any event, section 1237 should include corporations generally.

**204**

- 1237(b)(1)** The sale of the first five lots should be regarded as sales of capital assets, regardless of when the sale of the sixth lot takes place.

**205**

- 1237(b)(3)(c)** In view of the economic facts and the other conditions attached to "necessary improvements," the waiving of basis appears to be too high a price to pay for the relief granted. This requirement should be repealed.

**Section****206**

- 1238** The provisions relating to amortization in excess of depreciation should be made to apply to all facilities with respect to which 5-year amortization is taken, such as grain storage facilities.

**207**

- 1301** The percentage limitation on deductions for contributions should not be affected by the workings of the spreadback provisions. Otherwise, planning of charity giving is impeded and strange results develop in the year of collection and the years of backward allocation.

**208**

- 1312** The inconsistency provisions should be broadened to take care of inconsistency between income, gift, and estate taxes for the same item.

**209**

- 1313(c)** Partners and the spouse of a partner should be included in the concept of related taxpayers. At present, in a partnership between a father and a married son, if the government taxes everything to the father, who later wins his case, the government can proceed against the son but not against the wife of the son.

**210**

- 1321** The rules for involuntary liquidation of LIFO inventories should be permanently extended to cover circumstances and conditions beyond the reasonable control of the taxpayer, such as strikes, fire, floods, etc., which prevent the acquisition of inventory, directly or indirectly.

**Section**

**211**

- 1341** The claim of right rule should apply to a decedent's estate or heirs if it would have been applicable to the decedent.

**212**

- 1341(a)(5)** An amount may have been received in an earlier year under claim of right which was not technically included in "gross income" but was included in the proceeds of a sale or exchange of property and entered into the calculation of gain or loss. Where the effect of a restoration is to convert what was earlier reported as a gain into a loss (or a greater loss) inadequate relief is afforded since the full restoration was not included in gross income. In such a case, the adjustment under section 1341(a) (5) should permit a recomputation in the year of the sale or exchange and other years prior to the restoration, as if the restoration had actually been made in the year of the sale or exchange.

**213**

- 1361** Closely held corporations should be granted the option to be taxed as partnerships.

**214**

- 1361(a)** An organization which elects to be taxed as a corporation should not become subject to the penalties provided in section 6655 for failure to make any payment of estimated tax prior to the time of making the election.

**215**

- 1361(b)(3)** Under Canadian law, a stockbroker must have a partner who is a Canadian citizen and a resident of Canada. This prevents American brokerage firms from the exercise of the option to be taxed as corporations. This restriction should be eliminated.

**Section**

**216**

- 1361(d)** The partners and the proprietor of an organization taxed as a corporation should be treated as employees for *all* purposes.

**217**

- 1361(f)** The Code should clearly state the effect of a termination of the election to be taxed as a corporation.

**218**

- 1361(f)** Upon termination of the election to be taxed as a corporation, the partners or proprietor of the organization should not to that extent become subject to the penalties provided in section 6654 in respect to payment of estimated tax.

**219**

- 1361(i)(3)** It should be made clear that the first distributions will be deemed to be out of personal holding company income includible in the income of the proprietor or partners.

**220**

- 1361(j)(1)** The relationship of section 267(a)(2) to this section should be made clear.

**221**

- 1501** The election should be made to apply to the taxable year affected by a change in law, irrespective of the filing of a prior year's return before or after the date the change is effected or enacted.

**222**

- 2037** Where there is any reversionary interest, the value to be taxed should be the value of the reversionary interest and not the entire value.

**Section**

**223**

- 2042(2)** The provision relating to a 5% reversionary interest in insurance should be limited to those situations where the taxpayer "retains" a reversionary interest (as in corresponding section 2037(a)(2)) and not one that can arise through inheritance or operation of law.

**224**

- 2055** Charity deduction for estate taxes should be the same as for income taxes and include, among other charities, community funds and foundations.

**225**

- 2056** The marital deduction should be allowed where the wife gets a specific portion of all income, and not merely all the income from a specific portion of the estate.

**226**

- 2056(d)** It should be possible to make a disclaimer of a portion of an interest.

**227**

- 3121(a)** The definition of wages for income tax and for social security tax purposes should be the same. This arises particularly in connection with sick pay, meals and lodging furnished to employees, etc.

**228**

- 4301** A mere change in the state of incorporation should not involve a stamp tax.

**229**

- 6015** Provision should be made for quick refunds on estimates where in the early quarters of the year there is

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anticipated a very large income and at succeeding estimate dates a radical reduction in the estimate is in order.

**230****6016**

There should be an affirmative provision that no declaration is required of any corporation if the amount of tax shown on its return for the previous taxable year did not exceed \$100,000.

**231****6046**

This section, relating to filing of reports by advisors as to foreign corporations, should be eliminated, as experience has demonstrated its impracticability.

**232****6071**

Where a taxpayer reports on a 53-week period, social security reports should be filed for the same period.

**233****6071****6152(a)(3)**

Form 940 should be due April 15, and the full tax should be payable with the filing of the return.

**234****6153(a)**

In order to conform with administrative practice, the Code should provide that payment of the installment due on January 15 will be due on January 31 provided the tax return is filed by January 31.

**235****6073**

Original and amended declarations of estimated tax should be filed at the end of the month rather than the middle of the month. This correspondingly applies to section 6074.



**Section**

**236**

- 6073(c)** The prohibition against filing more than one amendment of a declaration in any interval between installment dates should be eliminated.

**237**

- 6081(b)** To be realistic, termination of extension of time for filing returns should require a return by not less than 20 days from the termination notice.

**238**

- 6102** The right of taxpayers to disregard cents in tax computations should also apply to supporting schedules.

**239**

- 6164(a)** Since net operating losses must now be carried back to the second preceding taxable year, the taxpayer should be allowed an extension for the payment of any additional taxes due for the second preceding year, and not merely the taxes of the first preceding year.

**240**

- 6405(a)** Review of refunds by the Joint Committee should be based upon the amount of refund for each year and without interest.

**241**

- 6405(a)** Where there are deficiencies and overpayments which result from the transfer of items from one year to another and the overpayments are in excess of \$100,000, the case should not be reported to the Joint Committee unless the net refund exceeds \$100,000.

**Section**

**242**

**6405(a)** The amount of credit or refund which will require a report to the Joint Committee should be increased to \$200,000.

**243**

**6501(b)(3)** The statute of limitations should run for a fixed number of years if no return was filed by a taxpayer because there was reason to believe, in good faith, that the taxpayer was an exempt organization.

**244**

**6501(d)** Where a prompt assessment is requested, the limitation  
**6501(e)** period in the case of omission of 25% of gross income should also be cut in half.

**245**

**6511** The period of limitation on filing a claim for refund should not run against the taxpayer prior to the time that the period on assessment runs against the government. To accomplish this:

- (1) Section 6511(a) should include the time for which an extension was granted.
- (2) Sections 6513(a) and (b) should take into account an extension of time for filing.

It is most important that this change be retroactive to the effective date of the 1954 Code.

**246**

**6654** The addition to the tax should not apply to a taxable year if the taxpayer dies during such taxable year or during the first 15 days of the succeeding taxable year, even though a joint return is filed for the deceased taxpayer and his surviving spouse.

**Section**

**247**

- 6654(b)** Since the penalty is always computed by reference to the 70% of the actual tax shown on the return of the current year, \$1 underpayment in an estimate that is based on last year's tax, or last year's income, can bring about a substantial penalty. This should be corrected. The penalty should be based on the *deficiency* calculated with reference to the most favorable safety zone.

**248**

- 6654(d)** It should be made clear that where a taxpayer's return  
**6655(d)** for the prior year showed no liability, the penalty for underpayment should not be applicable for the current year.

**249**

- 6654(d)(2)** A taxpayer who has fluctuating or irregular income, and who has to amend his declaration of estimated tax, may become subject to the penalties of section 6654 even though he complies literally with the amending and paying requirements of section 6153(c). This should be clarified. An illustration is where a taxpayer using the 90% method estimates his tax for the first declaration on his actual taxable income to date of \$1,000, and, at the time for the second installment, based on his actual taxable income to that time of \$4,000.

**250**

- 7206(1)** Any criminal penalty should be affirmatively eliminated where a declaration of estimated tax is based on last year's tax or income, even though the taxpayer knows the current year will show a higher income.

**251**

- 7502(a)** The date of mailing of a return should be treated as the date of filing.

